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Attorneys for Plaintiff SHARON PARK, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SHARON PARK, on behalf of himself and all
others aggrieved employees,

Plaintiff,

v.

AMERICAN CONTRACTORS IDEMNITY
COMPANY, a California Corporation; TOKIO
MARINE AMERICAN INSURANCE
COMPANY; and DOES 1- 50, Inclusive,

Defendant,

Case No. **22STCV03555**

COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (PAGA)

1 Plaintiff, SHARON PARK (“Plaintiff”), as a representative of the State of California and
2 the Labor and Workforce Development Agency (LWDA), and on behalf of himself and other
3 current or former aggrieved employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of Plaintiff and other aggrieved employees, to collect
7 civil penalties for Defendant’s Labor Code violations.

8 2. Defendants and employers, AMERICAN CONTRACTORS IDEMNITY
9 COMPANY (“ACIC”) and TOKIO MARINE AMERICAN INSURANCE COMPANY
10 (“TMAIC”) (collectively “Defendants”), violated numerous wage and hour laws with respect to
11 Plaintiff and other aggrieved employees by failing to provide, for example: accurate and itemized
12 wages statements, payment for all hours worked (including regular wages and overtime), failure
13 to provide a minimum wage lawful meal periods, lawful rest periods, timely payment during
14 employment, failure to reimburse for expenses incurred during the course and scope of
15 employment, and payment upon separation of employment.

16 3. Defendants violated numerous wage and hour laws with respect to Plaintiff and
17 other aggrieved employees by failing to provide, for example: accurate and itemized wages
18 statements, payment for all hours worked (including regular wages and overtime), lawful meal
19 and rest periods, minimum wages for those hours worked but not compensated, timely payment
20 of wages during employment, reimbursement for necessary expenses incurred during the course
21 and scope of employment, and payment upon separation of employment

22 **PARTIES**

23 **The Plaintiff**

24 4. Plaintiff is, and at all times herein mentioned was, a resident of the County of Los
25 Angeles. Similarly aggrieved, former and/or current employees are those employees employed
26 by Defendants during the relevant time period who were subject to the same wage and hour
27 policies/practices as Plaintiff, and thereby suffered similar or substantially similar violations
28 (“Aggrieved Employees”).

1 **The Defendants**

2 5. Defendant ACIC is a California corporation which, at all relevant times mentioned
3 herein, existing, doing business and employing individuals in the County of Los Angeles, State
4 of California. Plaintiff is informed and thereon alleges that Defendant exercised control over
5 Plaintiff and Aggrieved Employees' wages, hours, and working conditions.

6 6. Defendant TMAIC is a New York corporation which, at all relevant times
7 mentioned herein, existing, doing business and employing individuals in the County of Los
8 Angeles, State of California. Plaintiff is informed and thereon alleges that Defendant exercised
9 control over Plaintiff and Aggrieved Employees' wages, hours, and working conditions

10 7. The true names and capacities, whether individual, corporate, associate, or
11 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
12 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
13 amend this Complaint to insert the true names and capacities of said Defendants when the same
14 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
15 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
16 therefore liable to Plaintiff as alleged hereinafter.

17 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times
18 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
19 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
20 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
21 least in part within the course and scope of said agency, employment, conspiracy, joint
22 employment, alter ego status, and/or joint venture and with the permission and consent of each of
23 the other Defendants.

24 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
25 and each of them, including those Defendants named DOES 1-50, acted in concert with one
26 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
27 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
28

1 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
2 each of them, including those Defendants named as DOES 1-50, formed and executed a
3 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
4 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
5 to and actually causing Plaintiff harm.

6 10. Whenever and wherever reference is made in this Complaint to any act or failure
7 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
8 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
9

10 **JURISDICTION AND VENUE**

11 11. Venue is proper in Los Angeles County, because Defendants maintain their
12 locations and transact business in this county, the obligations and liability primarily arise in this
13 county, and work was primarily performed by Plaintiff and other aggrieved employees in this
14 county.

15 12. The California Superior Court has jurisdiction over this matter. The individual
16 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
17 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
18 amount required for diversity removal. Further, there is no federal question at issue as the issues
19 herein are based solely on California statutes and law, including, but not limited to, the California
20 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
21 and California Rules of Court.

22 **GENERAL ALLEGATIONS**

23 13. Defendant employed Plaintiff as an accounting clerk from on or about May 2006,
24 to approximately February 1, 2021.

25 14. At all relevant times herein, Defendants employed Plaintiff and other Aggrieved
26 Employees as employees. Aggrieved Employees mean and refers to all persons who worked for
27 Defendant as all employees at any time during the specified relevant time period and were subject
28 to the same wage and hour practices and policies, in whole or in part, as Plaintiff, and therefore,

suffered some or all of the violations of the Labor Code alleged herein.

15. Plaintiff and Aggrieved Employees were subject to an unlawful rounding policy for their compensable work time, involving modest deductions of time from the time actually worked, to the detriment of Plaintiff and Aggrieved Employees. Not all of Plaintiff's and Aggrieved Employees' compensable work time spent under the control of Defendants was accounted for and compensated.

16. On many occasions, Plaintiff and Aggrieved Employees would work more than 8 hours per day or 40 hours per week without overtime pay. Plaintiff and similarly Aggrieved Employees would not receive all compensable work time, or their work time was illegally rounded.

17. Defendants regularly did not have enough employees to provide sufficient coverage to maintain their business operations so Plaintiff and similarly Aggrieved Employees could not take complete, timely and uninterrupted meal and rest breaks.

18. In an effort to curtail labor costs, Plaintiff is informed and believes, and thereon alleges that Defendants regularly and consistently did not have staff enough employees to provide sufficient coverage to both maintain their business operations and provide legally mandated meal and rest periods, despite reasonably foreseeable workload. Consequently, Plaintiff and similarly Aggrieved Employees could not take complete, timely and uninterrupted meal and rest breaks because Defendants prioritized completion of daily duties ahead of meal and rest period compliance.

19. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

20. For all provisions of the Labor Code except those for which a civil penalty is

specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

21. Defendants' conduct during the PAGA period with respect to Plaintiff and the Aggrieved Employees violates numerous Labor Code sections as detailed herein.

22. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

23. At all relevant times herein, Defendants employed Plaintiff and other Aggrieved Employees as employees who were subject to the employment policies, in whole or in part, and therefore suffered the same or substantially similar violations, in whole or in part.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for all hours worked, including the applicable minimum, regular, and overtime wages, and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and Aggrieved Employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and Aggrieved Employees all earned minimum, regular, and/or overtime compensation.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy of not providing timely meal periods. Defendants failed to pay an additional hour of pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendants' unlawful policy and practice, Plaintiff and Aggrieved Employees did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular

1 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

2 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
4 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
5 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
6 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
7 and policy of not providing timely rest periods. Defendants failed to pay an additional hour of
8 pay to Plaintiff and Aggrieved Employees for each rest periods were not provided or was
9 interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and Aggrieved
10 Employees did not receive all requited rest periods or payment of one (1) additional hour of pay
11 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
12 uninterrupted 10 minute off-duty rest period.

13 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and certain Aggrieved Employees were entitled to
15 timely payment of wages due upon separation of employment. In violation of the Labor Code,
16 Plaintiff and certain Aggrieved Employees did not receive payment of all wages due, within
17 permissible time periods, upon separation of employment.

18 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
20 itemized wage statements that accurately showed their actual hours worked, total hours worked,
21 number of hours worked at each hourly rate, gross and net wages earned, and correct employer
22 information in accordance with California law. As a result of the wage violations specified
23 above, and in violation of the Labor Code, Plaintiff and Aggrieved Employees were not provided
24 with accurate itemized wage statements that accurately reported their gross and net wages
25 earned, total hours worked, each applicable rate of pay in effect during the pay period with the
26 corresponding number of hours worked, and the address of the legal entity that is the employer,
27 among other things.
28

1 29. Plaintiff and Aggrieved Employees were employees covered under one or more
2 statutes under the Labor Code, including but not limited to section 2802, but were not reimbursed
3 by Defendants for all business expenses incurred, including but not limited to expenses arising
4 from working remotely from home, such as the cost of electronic devices and accessories used
5 for work purposes and the prorated cost of personal cellular home wi-fi data plans utilized for
6 work purposes.

7 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Defendants were required to maintain accurate records of the hours
9 worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendant failed
10 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
11 unfair rounding practices, among other things.

12 **FIRST CAUSE OF ACTION**

13 **(Civil Penalties Under the Private Attorneys General Act,**
14 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

15 31. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
16 Complaint as if fully alleged herein.

17 32. By this complaint, Plaintiff brings this case as a representative action seeking
18 penalties for himself, the Aggrieved Employees, and the State of California in a representative
19 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
20 employee who was employed by Defendants and subject to at least one of the Labor Code
21 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
22 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
23 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and
24 2802.
25

26 33. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
27 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
28 sections alleged to have been violated, and after receiving notice from the LWDA of its intention

not to investigate, or after 65 days have passed without notice from the LWDA.

34. Prior to filing this complaint, on March 16, 2021, Plaintiff gave written notice of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. The written notice was given via certified mail to Defendants, and the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-826072-21. A true and correct copy of Plaintiff's notice to the LWDA and Defendant(s), dated March 16, 2021, is attached hereto as **Exhibit A**.

35. The LWDA has not provided Plaintiff with any notice that it intends to investigate the violations as alleged in Plaintiff's March 16, 2021, notice, and more than 65 calendar days have elapsed since the postmark date on the notice.

36. California Labor Code §§2698-2699.5, in relevant part provides, "any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency...for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

37. As an aggrieved employee, Plaintiff brings this civil action to recover civil penalties for Defendants' Labor Code violations.

FIRST VIOLATION

(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)

38. Under California Labor Code §512(a), "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

39. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other

1 qualifying employees who worked shifts of greater than five hours, meal periods within the first
2 five hours of the shifts worked. Defendants failed to pay Plaintiff one hour's pay at Plaintiff's
3 regular rate of pay for each day Defendants failed to provide a meal period in compliance with
4 section 512.

5 **SECOND VIOLATION**

6 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

7 40. Under California Labor Code §226.7(b), "An employer shall not require an
8 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
9 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

10 41. Industrial Welfare Commission (IWC) provides, "Every employer shall authorize
11 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
12 of each work period. The authorized rest period time shall be based on the total hours worked
13 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

14 42. Defendants failed to authorize and permit Plaintiff and other employee to take
15 rest periods and mandated by the Wage Order.

16 43. Under §226.7(c), an employer who violates §226.7(b), "...shall pay the employee
17 one additional hour of pay at the employee's regular rate of compensation for each workday that
18 the meal or rest or recovery period is not provided."

19 44. Defendants failed to pay Plaintiff and other employees who were not provided
20 rest periods one hour of pay at their regular rate of pay.

21 **THIRD VIOLATION**

22 **(Failure to Provide Complete and Accurate Wage Statements,** 23 **in Violation of Labor Code Section 226)**

24 45. Under California Labor Code §226(a), an employer is legally obligated to provide
25 its employees, semi-monthly or at the time of payment of wages, "an accurate itemized statement
26 in writing..."
27

28 46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties

1 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
2 Labor Code § 2699.

3 **FOURTH VIOLATION**

4 **(Failure to Pay Overtime Wages)**

5 47. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
6 employer is required to compensate employees for all overtime, which is calculated at one and
7 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
8 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
9 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
10 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
11 any workweek.

12 48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
13 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
14 Labor Code § 2699.

15 **FIFTH VIOLATION**

16 **(Failure to Pay Minimum Wages)**

17 49. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
18 payment to an employee of less than the applicable minimum wage for all hours worked in a
19 payroll period is unlawful.

20 50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
21 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
22 Labor Code § 2699.

23 **SIXTH VIOLATION**

24 **(Failure to Timely Pay Wages During Employment)**

25 51. Pursuant to California Labor Code § 204, for all labor performed between the 1st
26 and 15th days of any calendar month, an employer is required to pay its employees between the
27 16th and 26th day of the month during which the labor was performed. California Labor Code §
28

1 204 also provides that for all labor performed between the 16th and 26th days of any calendar
2 month, Defendants are required to pay their employees between the 1st and 15th day of the
3 following calendar month. In addition, California Labor Code § 204 provides that all wages
4 earned for labor in excess of the normal work period shall be paid no later than the payday of the
5 next regular payroll period.

6 52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
7 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
8 Labor Code § 2699.

9 **SEVENTH VIOLATION**

10 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

11 53. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
12 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
13 201 mandates that if an employer discharges an employee, the employee's wages accrued and
14 unpaid at the time of discharge are due and payable immediately.

15 54. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
16 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
17 Labor Code § 2699.

18 **EIGHTH CAUSE OF ACTION**

19 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

20 **(Against all Defendants and DOES 1 to 50, inclusive)**

21 1. Plaintiff realleges and incorporates by reference each and every allegation contained
22 in all of the preceding paragraphs above as though set forth in full herein.

23 2. Labor Code § 2802 provides that an employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer.

27 3. Defendants failed to indemnify and reimburse Plaintiff for all necessary
28 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's

1 job duties.

2 4. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
3 incurred as a result of discharging his duties, including interest.

4 5. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
5 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
6 Labor Code § 2699.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays for the following relief:

- 9 1. For penalties in an amount according to proof;
10 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
11 3. For such other and further relief as this Court may deem just and proper.
12

13 Respectfully Submitted,

14 Dated: January 28, 2022

WORK LAWYERS, PC

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16
17 By:  _____

Justin Lo

Attorney for Plaintiff
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EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Lab. Code, § 2699.3)

DATE March 16, 2021

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California Labor &
Workforce Development Agency
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**SUBJECT SHARON PARK V. AMERICAN CONTRACOTORS IDEMNITY
COMPANY ET AL. – NOTICE OF LABOR CODE VIOLATIONS
UNDER CAL. LABOR CODE 2699.3 – LWDA-CM-802620-20**

Dear PAGA Administrator:

This office represents Sharon Park (“Complainant”) in connection with claims under the California Labor Code. Complainant is a former employee of American Contractors Indemnity Company and Tokio Marine American Insurance Company. (“Employers”). Pursuant to Labor Code section 2699.3, subdivision (a), we are providing written notice that Employer is in violation of various provisions of the California Labor Code.

Complainant intends to file a complaint against Employer in California Superior Court pursuant to Labor Code section 2699 on behalf of themselves and all aggrieved employees within the one year prior to the filing of the complaint (“Aggrieved Employees”).

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If Employer intends to cure the alleged violations within the statutory time period set forth in Labor Code sections 2699 and 2699.3, subdivision (a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to Section 2699.

The Named Entities Are Joint Employers of Complainant and Aggrieved Employees

California courts have recognized that the definition of “employer” for the purpose of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35,65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers or permits any person to work or exercises control over the wages, hours, working conditions or any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and asserts that American Contractors Indemnity Company and Tokio Marine American Insurance Company are joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered, and permitted Complainant to perform services from which they benefitted, and furthermore the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant, they are each liable for civil penalties for violation of the California Labor Code as to the Complainant and other aggrieved employees.

The Employers

Employer and its agents own, operate, or otherwise manage a business known as American Contractors Indemnity Company and Tokio Marine American Insurance Company. According to the California Secretary of State’s website, Employers are businesses registered in California on September 25, 1990 and May 1, 2012 respectively.

Employer may be contacted directly through its agent for service of process at:

Anna Noveman
Agent for Service of Process for American Contractors Indemnity Company

801 S. Figueroa St. Suite 700
Los Angeles, CA 90017

Amanda Garcia
Agent for Service of Process for Tokio Marine American Insurance Company
818 West 7th St. Suite 930
Los Angeles, CA 90017

The business and mailing address listed for Employer with the California Secretary of State is as follows:

American Contractors Indemnity Company
Human Resources/Legal Dept.
801 S. Figueroa St. Suite 700
Los Angeles, CA 90017

Tokio Marine American Insurance Company
Human Resources/Legal Dept.
1221 Avenue of the Americans Suite 1500
New York, NY 10020

Complainant believes and hereon alleges that Employers employ, at a minimum, 200 or more aggrieved employees at its California locations at any given time. Specifically, it is believed that at any given time Employer has approximately 200 or more persons employed and working as accounting clerks, with additional employees in other positions within California.

Factual Background

Employer employed Complainant as an accounting clerk or other like positions in California. Complainant began working or on about 2005 and her last day of employment was on or about February 1, 2021. Complainant duties primarily included maintaining records for the accounts receivable.

The position required Complainant to work more than 8 hours a day and/or 40 hours per week without lawful compensation. Complainant and aggrieved employees were compensated at a rate of approximately \$21 per hour.

Complainant and aggrieved employees were not paid minimum wages and overtime for compensable work time spent under the control of Employer that was not compensated.

Complainant and aggrieved employees were not reimbursed for all necessary expenses incurred in the performance of their job duties. Employer required Complainant and aggrieved employees to use their personal phones, computers, and home or personal internet connection to conduct company business without reimbursement. Complainant and aggrieved employees did not receive any reimbursement for these expenses. In addition, Complainant and similarly aggrieved employees were not provided with an alternative physical location to perform their work. Plaintiff and aggrieved employees were then required to regularly utilize a portion of their personal home to perform their duties on behalf of Employer without reimbursement for the costs associated with such utilization.

Employer failed to authorize and permit all required meal and rest periods for Complainant and aggrieved employees because, upon information and belief, employer maintained unlawful meal/rest period policies/practices. Employer regularly did not have enough employees to provide sufficient coverage to maintain their business operations so Complainant and aggrieved employees could not take complete, timely and uninterrupted meal and rest breaks. Employer failed to provide Complainant and aggrieved employees with an additional hour of premium pay at the regular rate of pay for each rest period violation, as required by Labor Code section 226.7.

Complainant and aggrieved employees were subject to an unlawful rounding policy for their compensable work time. Not all of Complainant and aggrieved employees compensable work time spent under the control of Employer was accounted for and compensated.

Defendants failed to provide Complainant and aggrieved employees accurate itemized wage statements in writing.

Legal Violations

At all relevant times, Complainant and Aggrieved Employees were employees working for Employer. At all relevant times, Complainant was an aggrieved employee as defined in Labor Code section 2699, subdivision (c). (Lab. Code, § 2699, subd. (c) [“any person who was employed by the alleged violator who was employed by the alleged violator and against whom one or more of the violations was committed”].)

Complainants’ employment resulted in numerous violations of the California Labor Code, including the following:

- Employer failed to keep accurate and complete time records for Complainant and Aggrieved Employees. (Lab. Code, §§ 1174, 1198, 1199; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) [“Every employer shall keep accurate information with respect to each employee including the following: . . . Time records showing when the employee begins and ends each work period.”].)
- Employer failed to pay Complainant and Aggrieved Employees for all hours worked. (Lab. Code, § 1197; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324 [an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage].)
- Employer failed to pay Complainant and Aggrieved Employees at least minimum wage for all hours worked or overtime rates for overtime work. (Lab. Code, §§ 1194, 1197, 1197.1.)
- Employer failed to pay Complainant and Aggrieved Employees overtime equal to one and one-half times their regular hourly rate of pay for each hour worked beyond eight

(8) hours per workday and each hour worked beyond forty (40) hours per work week. (Lab. Code §§ 510, 1198–1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)

- ☐ Employer failed to pay Complainant and Aggrieved Employees overtime equal to double their regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. (Lab. Code §§ 510, 1198 –1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)
- ☐ Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a) ; Cal. Code Regs., tit. 8, § 1104 0, subd. 11.)
- ☐ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a); Cal. Code Regs., tit. 8, § 11040, subd. 11.)
- ☐ Employer failed to maintain a company rest break policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)
- ☐ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)
- ☐ Employer failed to properly record Complainant and Aggrieved Employees’ meal periods as required by Labor Code section 1198 and applicable IWC Wage Orders(Lab.

Code, § 1198; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) [“Meal periods, split shift intervals and total daily hours worked shall also be recorded.”].)

- ☐ Employer failed to pay Complainant and Aggrieved Employees all wages earned by Complainant and Aggrieved Employees on at least semimonthly paydays. (Labor Code, §§ 204, subd. (a), 207.)
- ☐ Employer refused to make and/or falsely denied the amount of payments due to Complainant and Aggrieved Employees. (Lab. Code, § 216; see also Lab. Code, §§ 1174, 1197, 1197.1, 1198, 1199, 2699.)
- ☐ Employer intentionally and willfully failed to provide proper and accurate wage statements to employees Complainant and Aggrieved Employees. (Lab. Code, §§ 226, subd. (a), 226.3, 226.6.) The deficiencies include, among other things, the failure to correctly identify the total hours worked, the gross wages, and correct hourly rate earned by Complainant and Aggrieved Employees.
- ☐ Employer failed to provide proper notices regarding employee pay to Complainant and Aggrieved Employees. (Lab. Code, § 2810.5.)
- ☐ Employer failed to pay employees all earned and unpaid wages when they separated/separate from employment. (Lab. Code, §§ 201, 202, 203, 210.)
- ☐ Employer refused to reimburse Complainant and Aggrieved Employees for all expenses incurred during the course and scope of their employment (Lab. Code, § 2802.)

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. Complainant and other Aggrieved Employees seek to recover those amounts.

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency ("LWDA") setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code sections 2699 and 2699.3, subdivision (a), prior to seeking penalties and premium wages allowed by law for the statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the Labor Commissioner or LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of herself and all other aggrieved California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

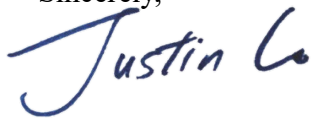
Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within **sixty (60) days** of this notice to our office and to that of other charged parties.

If you have any questions, please contact me at the phone number or address below:

Justin Lo
Work Lawyers PC
22939 Hawthorne Boulevard, Suite 202
Torrance, California 90505
Tel: (855) 670-1267
Email: Justin@WorkLawyers.com

Thank you for your attention to this matter. I look forward to hearing from you at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Justin Lo". The signature is fluid and cursive, with the first name "Justin" being larger and more prominent than the last name "Lo".

JUSTIN LO

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue, Mar 16, 2021 at 3:14 PM

To: "info@worklawyers.com" <info@worklawyers.com>

3/16/2021

LWDA Case No. LWDA-CM-826072-21

Law Firm : Work Lawyers, PC

Plaintiff Name : Sharon Park

Employer: American Contractors Indemnity Company

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm